

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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STEVEN BYRD,

Plaintiff,

NOTICE OF REMOVAL

- against -

Docket
14CV

THE CITY OF NEW YORK
P.O. BEERS (Tax. Reg #945498)

ECF Case

Defendants.

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Defendant THE CITY OF NEW YORK ("City"), by its attorney, Jeffrey D. Friedlander, Acting Corporation Counsel of the City of New York, upon information and belief, respectively petitions this Court, pursuant to 28 U.S.C. §§ 1331, 1367(a), 1441(a), and 1446(b) as follows:

1. On or about December 4, 2013, plaintiff Steven Byrd ("plaintiff") commenced the above-captioned civil action in the Supreme Court of the State of New York, Kings County, under Index No. 21040/13, and of which a trial has not yet been had therein.

2. On December 10, 2013, defendant City received personal service of plaintiff's summons and complaint, a copy of which is annexed hereto as Exhibit A.

3. On December 26, 2013, an answer on behalf of defendant City was interposed on plaintiff and filed in the Supreme Court of the State of New York, Kings County, a copy of which is annexed hereto as Exhibit B.

4. Attached to this Notice, and by reference made a part hereof, are true and correct copies of all known pleadings and process filed herein. See Exhibits A-B.

5. The complaint alleges that on June 29, 2013 at approximately 11:15 p.m., while lawfully within the vicinity of Dearborn Court & Crown Street, Brooklyn, NY, plaintiff was

assaulted, battered and falsely arrested by defendant Police Officer Beers (“Beers”) without there having been any probable cause or provocation. See ¶¶ 16, 21 of Exhibit A.

6. Plaintiff further alleges that following his arrest he was detained at the 71st Precinct for approximately two (2) hours where he was falsely charged and maliciously prosecuted for Unlawfully Operating his Bicycle on the Sidewalk, Unlawful Possession of Marihuana, and Disorderly Conduct. See ¶¶ 17, 19, 21, 29 of Exhibit A.

7. As a result of the above alleged conduct by defendant Beers’, who was allegedly acting under color of state law and pursuant to an alleged City custom and/or policy of unlawfully stopping and frisking citizens in the absence of any reasonable suspicion, plaintiff now seeks to hold defendant City liable pursuant to 42 U.S.C. § 1983, as well as the Fourth, Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States. See ¶¶ 21-23, 40-52 of Exhibit A.

8. Accordingly, this is a civil action over which the District Courts of the United States have original jurisdiction pursuant to 28 U.S.C. §§ 1331, 1441. See, Bill Wolf Petroleum Corp. v. Port Wash. North, 489 F. Supp. 2d 203, 206 (E.D.N.Y. 2007).

9. Furthermore, since the state law claims arise out of a common nucleus of operative facts, with both state and federal allegations forming part of the same case or controversy under Article III of the United States Constitution, this Court’s exercise of supplemental jurisdiction is thereby appropriate. See, 28 U.S.C. § 1367(a). See also, Rosario v. Amalgamated Ladies’ Garment Cutters’ Union, 605 F.2d 1228, 1247 (2d Cir. 1979).

10. This Notice of Removal is timely filed within thirty (30) days from the time defendant City received a copy of the Summons and Complaint. See, Allen v. Mattingly, 478 Fed. Appx. 712, 713 (2d Cir. N.Y. 2012).


11. On January 3, 2014, defendant Beers provided written consent for the defendant City to remove this action to the United States District Court, Eastern District of New York, in compliance with 28 U.S.C. § 1446(b)(2)(A), requiring that where there are multiple defendants, all named defendants over whom the state court has acquired jurisdiction must join in the removal petition. See, Park v. McGowan, 2011 U.S. Dist. LEXIS 121128 (E.D.N.Y. 2011). A copy of his consent to this Notice of Removal is annexed hereto as Exhibit C.

WHEREFORE, defendant City respectfully requests that the instant action now pending before Supreme Court of the State of New York, Kings County, be removed to the United States District Court of the Eastern District of New York, and for such other and further relief as this Court deems proper and just.

Dated: New York, New York
January 6, 2014

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